

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

: CIVIL ACTION NUMBER:
: 19-md-02875
IN RE: VALSARTAN PRODUCTS :
LIABILITY LITIGATION :
: TEAMS CONFERENCE
:

Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets
Camden, New Jersey 08101
June 25, 2024
Commencing at 1:02 p.m.

B E F O R E: **THOMAS I. VANASKIE (RET.)**
 SPECIAL MASTER

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LARRY MACSTRAVIC, COURTROOM DEPUTY

1 (Proceedings held via Teams conference before Special
2 Master Thomas I. Vanaskie at 1:02 p.m.)

3 SPECIAL MASTER VANASKIE: All right. I think we can
4 probably get started.

5 We have several items to go over. I wanted to go over
6 matters of a discovery nature, discovery dispute, and then hear
7 argument on a couple of the matters that are pending with
8 respect to the sanctions decision.

9 And so the first item I wanted to talk about was the
10 discovery with respect to Irbesartan and Losartan.

11 And who will be addressing that issue for the
12 plaintiffs?

13 MS. GOLDENBERG: Marlene Goldenberg. Nice to see you
14 again.

15 THE COURT: Good to see you again. It's been some
16 time.

17 And Mr. Goeppinger, will you be addressing this issue
18 or will somebody else?

19 MR. GEOPPINGER: Yes. That expertise is not mine, but
20 I think it's covered in our letter.

21 SPECIAL MASTER VANASKIE: All right. Marlene, you
22 want to go first?

23 MS. GOLDENBERG: Sure. We'll keep this real short.

24 So you know we've been doing discovery for a long time
25 now and we have mostly complete productions, we believe, from

1 most defendants, but at this point what we think would be very
2 helpful would be if the Court would enter a deadline for
3 substantial completion of discovery, just like we had last
4 time, so that we get a document from each defendant saying, you
5 know, we think we're done here.

6 And then we've asked in our letter for two deadlines
7 also for discovery to just keep moving. So on June 30th,
8 that's the date we would like the defendants to certify that
9 they've completed any document productions, and then also to
10 give us the identity and topics covered and available dates for
11 each of their 30(b)(6) witnesses. We served those notices
12 about a year ago, so hopefully that gives everybody enough time
13 to figure that out.

14 And then September 30th is the date that we'd like to
15 have as our deadline to complete depositions of the 30(b)(6)s.

16 I am sorry, I should say that that's completion of
17 document productions, not just substantial completion.

18 SPECIAL MASTER VANASKIE: All right. I'm a little
19 confused here.

20 So the June 30th deadline that you're proposing is for
21 what?

22 MS. GOLDENBERG: Oh, that's going to be completion of
23 document productions and then -- and again, I think most of the
24 defendants are done, but we're aware that there's at least one,
25 if not a few others, that may have some documents left to

1 produce.

2 And the second part of the June 30th deadline is we'd
3 like the defendants to tell us who their 30(b)(6) deponents are
4 going to be, when they're available, and which topics they're
5 covering.

6 SPECIAL MASTER VANASKIE: Okay. And completion of
7 those 30(b)(6) depositions by September 30th, is that what
8 you're saying?

9 MS. GOLDENBERG: Right.

10 SPECIAL MASTER VANASKIE: All right.

11 Mr. Goepfinger, are you prepared to talk about this or
12 is this somebody else's --

13 MR. GEOPPINGER: Well, I think Ms. Goldenberg was
14 referring to some deadlines with respect to manufacturer
15 defendants, so I'm going to let Ms. Lockard address those
16 since --

17 SPECIAL MASTER VANASKIE: Okay.

18 MS. LOCKARD: Hi, Judge Vanaskie.

19 SPECIAL MASTER VANASKIE: Hello. How are you?

20 MS. LOCKARD: I'm great. Good to see you again.

21 Let me -- if I could just provide some context. I do
22 think that we are making progress on negotiating this. We had
23 a meet and confer on Friday where we discussed these issues,
24 and I don't think we're too far off. From the defendant's
25 perspective, I think we would be in a position by the end of

1 July to have provided all dates and the names for our 30(b)(6)
2 witnesses.

3 The caveat to that is that back in December of 2023,
4 we had -- when we initiated meet and confers -- and there's
5 been several meet-and-confer calls among the plaintiffs and the
6 defendants. So just to be clear, discussions have been going
7 on, somewhat solve out recently so because of the TTP trial
8 issues.

9 But in any event, when we spoke in December, the
10 defendants asked that the plaintiffs provide names for any
11 individual, personal information fact witnesses that they want
12 to depose from the defendants so that we could schedule those
13 at the same time. And those names should not be dependent on
14 who we put forth as 30(b)(6) witnesses, however, we may choose
15 -- if there is a fact witness that plaintiffs know they want to
16 depose no matter what because the name is in the documents,
17 it's somebody they want to get their personal knowledge from,
18 then we may choose to make that person a 30(b)(6) witness and
19 do it all at once. That's how we did it in the Valsartan phase
20 and that's the most reasonable approach.

21 At a minimum, we should be getting names from the
22 plaintiff as to who they want to depose on a personal fact
23 witness level at the same time we're providing dates and
24 depositions for a 30(b)(6), and it should be a process where we
25 work together to try to fit those into a reasonable schedule.

1 But what we don't want to happen is we don't want to
2 provide our 30(b)(6) names in depositions and promise to do it
3 by a certain end point, and then plaintiffs come back and say,
4 oh, well, but we want to take these five or six additional fact
5 witness, corporate folks. So we think -- and we left that ball
6 in their court in December, and they did not get back to us
7 with any individual names.

8 That's what we're waiting for so we could do this all
9 at once in an organized, reasonable fashion. That's our
10 request, they give us the fact witness names, we'll work on
11 getting them scheduled along with 30(b)(6) witnesses.

12 In terms of the end point, we had proposed on Friday
13 that defendants have until the end of October to make the -- to
14 complete these depositions with the idea that we will be
15 rolling them out well before then. You know, certainly
16 depending on what happens at Judge Bumb's conference and what
17 she wants to proceed with this fall. You know, it may be in
18 our interest, in some of the defendants' interest to get these
19 depositions done in August and be done with them.

20 So it's not that we're trying to drag our feet on
21 that, but I do think we need to go about it in an organized
22 fashion. They need to give us the names of the folks they want
23 to depose, we'll get them scheduled, at the same time we do the
24 30(b)(6) depos, we could get it done by the end of October with
25 no problem. So that's our position on that.

1 With respect to the document production, Teva has
2 completed its document production. I believe all of the
3 manufacturer defendants have completed with the exception of
4 one, and I'll let the individual manufacturers speak to that if
5 they have a response there. But I believe that all, except for
6 one, of the document productions are completed, and I can say
7 with respect to Teva, ours is. Thank you.

8 SPECIAL MASTER VANASKIE: All right.

9 Let's hear first from you, Ms. Goldenberg.

10 MS. GOLDENBERG: Sure. So, you know, we don't need to
11 make this a whole prolonged process, but we did serve these
12 30(b)(6) notices a whole year ago. I'm not really sure what is
13 happening, where this is a difficult thing for the defendants
14 to tell us who their 30(b)(6) witnesses are, and certainly many
15 of them has told us it's going to be the same people anyway, so
16 I'm not sure why they're not willing to provide that
17 information before we give fact witness names.

18 But we -- what we're trying to do is to short circuit
19 this. You know, we went through a lot of depositions last
20 time. And if there's a 30(b)(6) witness that they're going to
21 put up, you know, maybe we don't need to depose other people,
22 but it certainly would inform our list of individuals that we
23 want to depose if we could get their 30(b)(6) name first.

24 And as far as the schedule is concerned, I'll just
25 say, you know, we've been ready to take these depositions for a

1 long time. My understanding is that it was made clear during
2 the Hetero settlement conference that discovery should be
3 moving. We're still ready. But we don't want to give anybody
4 an incentive to drag their feet at this point. We think these
5 depositions need to move. And if there is going to be a trial
6 date set, we'd like to use our time productively now and get
7 these done.

8 SPECIAL MASTER VANASKIE: Why wouldn't it be
9 appropriate to require that plaintiffs identify the fact
10 witnesses that they want to depose and then receive the
11 identity of the 30(b)(6) deponents?

12 MS. GOLDENBERG: We're in the process of trying to do
13 that, but at the same time, if we know that there's going to be
14 a 30(b)(6) witness who's going to be identified by the
15 defendants, you know, we may be able to take that deposition
16 and cut down on the number of depositions that we're taking.
17 We actually think this benefits them.

18 THE COURT: But here's what I think. I think you
19 should identify those witnesses that you want to depose, those
20 that you know, and we set a deadline for the identification of
21 30(b)(6) deponents. I would not preclude plaintiffs from
22 identifying other deponents after their initial list is
23 provided and after they receive the identification of the
24 30(b)(6) deponents, but we need to move this matter forward,
25 and this dispute about who should go first doesn't help.

1 So what I would like to suggest is that by July 15th
2 plaintiff identify the persons they want to depose as fact
3 witnesses; and that by July 31st -- I'm not looking at a
4 calendar, I don't know if that falls on a weekend or not -- the
5 defendants identify their 30(b)(6) deponents. And to the
6 extent there's some overlap there, that eliminates one
7 deposition.

8 MS. GOLDENBERG: Understood. And neither of those are
9 weekends, so you're good.

10 SPECIAL MASTER VANASKIE: Okay. All right. So that's
11 what we'll require with respect to the depositions.

12 With respect to deadline for completion of a document
13 discovery, you indicated, I think, Ms. Lockard, that there's
14 one manufacturing defendant that has not yet completed the
15 document production?

16 MS. LOCKARD: Yes, Judge. And Mr. Murtha is popping
17 on any time we mention that, so I'll let him address that.

18 SPECIAL MASTER VANASKIE: All right.

19 Mr. Murtha?

20 MR. MURTHA: Good afternoon, Your Honor.

21 As you know, the Hetero defendants have been heavily
22 involved in acquiring documents and working on our settlement
23 agreements and term sheets, so production has slowed for us. I
24 do have 3,500 documents to get through essentially myself. So
25 I believe that can be done by the end of July, beginning to mid

1 August.

2 But in five days, there's no chance I'm going to be
3 able to go through all of those documents and make the relative
4 designations for that. But I've spoken with counsel and we're
5 collecting documents from our client in India and working
6 actively to get that completed.

7 SPECIAL MASTER VANASKIE: How about if we give you
8 until the end of July?

9 MR. MURTHA: I believe that will work, Your Honor.

10 SPECIAL MASTER VANASKIE: All right. So we'll set the
11 end of July for completion of the document production by all
12 the defendants, including Hetero.

13 MR. MURTHA: Thank you, Your Honor.

14 SPECIAL MASTER VANASKIE: Anything else,
15 Ms. Goldenberg?

16 MS. GOLDENBERG: No. As long as the deadline for
17 identifying the 30(b)(6) witnesses, we're on the same page that
18 that also includes the topics they're going to cover and the
19 dates that they're available, I think we're good.

20 SPECIAL MASTER VANASKIE: Yeah, it will include both
21 the topics and the dates that they're available. All right?

22 MS. GOLDENBERG: We're all set. Thank you.

23 SPECIAL MASTER VANASKIE: Okay. Anything else on
24 Losartan/Irbesartan?

25 (No response.)

1 SPECIAL MASTER VANASKIE: All right.

2 Now let's move to discovery and issues in the
3 Valsartan matter. We have an issue with respect --

4 MS. GOLDENBERG: Your Honor, you know what, I spoke
5 too soon. I'm so sorry. We didn't get a deadline for the
6 depositions to be done.

7 SPECIAL MASTER VANASKIE: And I think October 31st
8 should be that deadline.

9 MS. GOLDENBERG: Okay. Thank you.

10 SPECIAL MASTER VANASKIE: On the matters that are
11 ready for trial, I suppose, or for Bellwether trials, the
12 question of discovery with respect to evidence relevant to
13 punitive damages has been addressed in letter briefs by
14 counsel.

15 And who will be addressing this issue for the
16 plaintiffs?

17 MR. SLATER: I will, Your Honor. Adam Slater.

18 SPECIAL MASTER VANASKIE: All right. And why isn't
19 this discovery untimely?

20 MR. SLATER: The reason is because in order to try the
21 case, we need up-to-date data information, and the only time to
22 get that is close to trial. The defense is acting as if they
23 want to make one production of punitive damage discovery and
24 they should have done it a long time ago and they're acting as
25 if that would be the only production, but that's not

1 reasonable.

2 And I can narrow the issues for Your Honor. What we
3 need to do is we need confirmation of the gross revenues in the
4 prior year or the current year, if they're able to have that,
5 and the net worth of the company. I think for the defendants
6 that are going to trial now, that's public, but we need them to
7 confirm it.

8 But this would have to be done before every trial.
9 For example, if there's a personal injury trial in two years,
10 the defendants wouldn't want us, the plaintiffs, to rely on the
11 net worth and gross revenue data from two years earlier. For
12 example, they've hit hard times and the company is worth less
13 money. So it has to be updated before each trial.

14 The normal practice is what we laid out in our briefs.
15 Normally this information is provided at or during trial
16 because defendants don't like to produce their financial
17 information before they're found to actually need to pay a
18 punitive damage verdict or -- not pay, but actually have to
19 defend against the verdict at trial when the amount becomes
20 relevant.

21 We followed the normal procedure and the defendants
22 said, well, you should have gotten this a long time ago, but
23 the bottom line is we still would have needed it updated at the
24 time of trial because it's an ongoing, changing set of facts.
25 And if we are trying cases for the next five years in this MDL,

1 we're going to need that production updated before each trial
2 because, again, the defendants and their financial situations
3 can change day by day, week by week, year by year, but you
4 always have to have the most up-to-date information confirmed
5 before the specific trial.

6 SPECIAL MASTER VANASKIE: All right. Who will be
7 addressing this issue for the defense?

8 I think you're muted, Mr. Ostfeld.

9 MR. OSTFELD: Thank you, Judge. Good afternoon, Judge
10 Vanaskie. Greg Ostfeld.

11 SPECIAL MASTER VANASKIE: Good afternoon.

12 MR. OSTFELD: I'll be addressing this on behalf of the
13 defendants.

14 Your Honor, I think I should have known at the outset
15 that this same issue is currently pending and fully briefed
16 before Judge Bumb as part of the parties' trial briefs for the
17 TPP trial, and Judge Bumb has not said how or if she plans to
18 proceed with the TPP trial or how she's going to deal with the
19 issues in the trial brief. So to that extent, this discussion
20 may be premature and should perhaps wait outcome of the
21 July 23rd case management conference when we'll get some
22 guidance from Judge Bumb as to how she sees dividing these
23 issues up between herself and Your Honor.

24 That said, I'm certainly happy to share our position.
25 I don't think it's going to change much whether you're deciding

1 it or Judge Bumb is deciding it. I'm at the Special Master's
2 leisure on that.

3 SPECIAL MASTER VANASKIE: Well, having heard from you,
4 it does seem to me that this is a trial-related issue and that
5 it would be appropriate to defer, at least in the first
6 instance, to Judge Bumb to see what her preference would be and
7 seek her guidance at the conference coming up on -- I guess
8 it's July 23rd.

9 You know, I think plaintiffs are entitled to this
10 discovery aside from the fact that, you know, I don't view it
11 as untimely, I'll put it that way. That's my view. But it
12 seems to me it's something that will come up trial by trial,
13 and why don't we defer to the trial judge on this matter at
14 this time.

15 So I won't make a decision now and we'll leave it go
16 until July 23rd.

17 MR. OSTFELD: All right. Thank you, Your Honor.

18 SPECIAL MASTER VANASKIE: All right. Thank you.
19 Anything else in terms of discovery?

20 MR. SLATER: I don't believe so from plaintiffs.

21 MR. GOEPPINGER: Your Honor, Jeff Goeppinger very
22 quickly on discovery, Losartan and Irbesartan, before we move
23 on to something else.

24 SPECIAL MASTER VANASKIE: Sure.

25 MR. GOEPPINGER: On the agenda --

1 (Simultaneous speakers.)

2 MR. GOEPPINGER: -- I think, you know, one was a
3 stipulation. We're just giving you notice that there's a
4 stipulation, the parties agree to on the motion to dismiss, and
5 we'll get it on file with Judge Bumb at her convenience.

6 The others were fact sheet issues. One that you
7 already resolved by entering that fact sheet; and another,
8 there was one issue hanging out there on the other fact sheet
9 that I think we have to look for, is my understanding, but
10 we're going to have a resolution on that. If we agree on that
11 and will be submitting, I anticipate, another fact sheet for
12 your approval.

13 SPECIAL MASTER VANASKIE: All right. Is there
14 anything else then?

15 MR. GOEPPINGER: That was all I had from the
16 Losartan/Irbesartan discovery.

17 SPECIAL MASTER VANASKIE: If there's nothing else,
18 then we'll move on.

19 MR. GOEPPINGER: Thank you.

20 SPECIAL MASTER VANASKIE: All right. Thank you.

21 All right. The other item I had on my agenda for
22 today was to hear argument with respect to the post-decision,
23 post-sanctions decision order that was issued that required --
24 required, and plaintiffs complied with, submission of proposed
25 findings of fact to support an adverse inference instruction

1 that has been ordered, and then to discuss the matter of
2 monetary sanctions.

3 And so I was hoping that I could hear some argument on
4 that this afternoon. And let me give you my thinking on this.
5 I want to issue the decision that -- to the extent that I can,
6 on monetary award and the adverse inference instruction so that
7 Judge Bumb has everything in front of her and decides
8 everything just once. Whether -- you know, both whether their
9 sanctions are appropriate, and if so, are these the appropriate
10 sanctions.

11 Rather than going up piecemeal -- this is the
12 appellate judge talking now -- and having to take this up in,
13 you know, bits of pieces. Let's get a final decision up there,
14 let Judge Bumb decide, and move the matter forward in a -- in
15 my judgement, at least, my flawed judgement, a more logical
16 sequence.

17 And that's what I was hoping to accomplish. So I will
18 tell you right now, I will give a decision out to Judge Bumb on
19 these issues that are outstanding so that when you present your
20 argument, you'll be presenting argument just once. That's my
21 intention.

22 All right. So Mr. Bernardo, you're speaking on behalf
23 of ZHP today?

24 MR. BERNARDO: I am. Good to see you, Your Honor.

25 SPECIAL MASTER VANASKIE: Good to see you. Thank you

1 for that.

2 Let me ask you a question. Are you the -- you know,
3 you certified that ZHP complied with discovery orders, but how
4 can you make that certification?

5 Are you -- in other words, do you have the ability to
6 go through Chinese documents in the Chinese language or
7 Mandarin and --

8 MR. BERNARDO: Well, I'm glad you asked, Your Honor,
9 because I was actually planning to raise that. Because while I
10 understand that the time to argue this anew is in front of
11 Judge Bumb and not here, and I don't want to sort of cover old
12 ground, but you may recall that at the outset of the hearing
13 Mr. Slater read that ZHP had not complied with CMO 54, and I
14 had expressed my understanding at the time from prior counsel
15 that they, in fact, had.

16 And we went back and forth, and I undertook at that
17 hearing to work with Mr. Slater and to go back and to be in a
18 position to certify that, and that's what you asked me to do.

19 SPECIAL MASTER VANASKIE: Right.

20 MR. BERNARDO: And I spent considerable, considerable
21 time doing that. And I am and have done this for other cases
22 and there are people who can translate documents and look at
23 those. And what I literally did, Your Honor, was spent weeks
24 personally retracing the steps, working with our vendor both in
25 China and the United States, working with my team at Skadden

1 and the team at the vendor to make sure we had people
2 translating documents and looking at them.

3 And for example, with respect to Ms. Kong, I went back
4 personally and asked for a collection, an audit, an evaluation
5 of what she had, what was made available. And to be very, very
6 clear, Your Honor, there were not four documents that were
7 produced from that period, there were dozens of documents that
8 were produced from that period.

9 And I explained to Mr. Slater that apparently what had
10 happened was that there was some issue with respect to the
11 deduplication or the duplicate custodial overlay provided by
12 the vendors, so documents that were from Ms. Kong's files that
13 were also from other people's files weren't, I'll use the word
14 "credited," so to speak, to Ms. Kong.

15 So I went back and did that. And I feel very
16 comfortable -- I mean, I managed e-discovery as national
17 coordinator for many, many MDLs and I've had to be in the
18 position to do this and certify this before.

19 With respect to the Jinsheng Lin memo, I similarly
20 went back and I worked with the vendor. We went back and we
21 looked to collect and double check. And I took all these steps
22 with respect to all of them. I actually spoke with the
23 individuals again and I confirmed that the only copy that still
24 exists of that document was one that happened to be on
25 Mr. Li's computer where I think you may recall there was some

1 computer problem and his computer had been changed or restored.
2 I won't go into the whole thing.

3 SPECIAL MASTER VANASKIE: Right.

4 MR. BERNARDO: So I walked through that and confirmed
5 that.

6 Similarly, with respect to the nitrosamine testing, I
7 actually spoke to the individuals who went through; I had my
8 own team go and audit and take a look.

9 So, no, Your Honor, I don't speak Chinese and I don't
10 expect to learn that any time soon, nor did I actually go to
11 China, but there are ways that a lawyer who has responsibility
12 for this can ensure to the best of his ability that appropriate
13 steps have been taken and that nothing suspicious appears.

14 And to the contrary, what I received in our client was
15 nothing but transparency and openness and nothing but
16 willingness to cooperate. I mean, we were on hours-long phone
17 calls at 6:00 and 7:00 in the morning on multiple days and
18 11:00, 12:00 and 1:00 at night. I don't take my certification
19 lightly. I swore to it under penalty of perjury and I stand by
20 that.

21 And I'm going into that, Your Honor -- and had you not
22 even asked, I would have raised it -- because the claim that
23 ZHP had not complied with its discovery was not only a part of
24 the basis of Your Honor's opinion -- and we can address that
25 with Judge Bumb -- but it certainly, I would expect, to be

1 relevant to you in consideration of the nature and type of
2 adverse inference and monetary fines.

3 So I really wanted to make sure that that's clear that
4 there's no basis to believe that there's any issue other than
5 Mr. Chen's failure to appear at his deposition for the reasons
6 that we stated.

7 I hope that addresses Your Honor. I'm sorry I went on
8 long, but since it's my name, I feel very personally
9 responsible and my credibility is on the line, so I wanted to
10 make sure I explain that fully.

11 SPECIAL MASTER VANASKIE: Very well. Thank you.

12 Mr. Slater, you want to respond?

13 MR. SLATER: Sure. I'll limit it to that issue, I
14 assume?

15 SPECIAL MASTER VANASKIE: Sure, yes.

16 MR. SLATER: Mr. Bernardo's certification, when you
17 read it cover to cover, number one, it's not based on personal
18 knowledge, as it's supposed to be. We are now hearing that
19 there was some sort of an audit process and review done by
20 other people who would be better situated to tell us what was
21 produced or not produced.

22 If you look at the certification, there's literally
23 nothing in there of substance or detail. Every paragraph is
24 basically based on my investigation, ZHP did everything right;
25 based on my investigation, I believe the steps taken were

1 appropriate. There's absolutely no detail whatsoever aside
2 from what was done to try to establish where information is or
3 why it couldn't be found.

4 You get into the specifics -- for example, paragraph
5 10 of Mr. Bernardo's certification says they looked for an
6 electronic version of the report and electronic version was not
7 located. If this was a full, transparent certification, it
8 would explain why. It would say we looked here, we looked
9 here, we looked here, this is what we found, this is what we
10 didn't find.

11 We're basically being asked to take it at face value
12 that, sorry, based on physics or metaphysics, some of these
13 documents just didn't exist. Mr. Bernardo brought up the
14 July 27th, 2017, email and talked about Min Li's testimony that
15 some issue happened with his computer and the document was
16 copied off his computer and that's why we got it as a PDF.
17 That's not helpful to ZHP. That's enormously problematic for
18 ZHP, because again, that's why -- and Your Honor has lived this
19 with us -- that's why it's been very clear to anyone who
20 understands electronic discovery that we were never supposed to
21 see that email. That's why it wasn't produced in the other ten
22 custodians' -- or however many other custodians' files. Nobody
23 was listed as a duplicate custodian.

24 Mr. Bernardo has a very upset look on his face, he's
25 nodding his head, but Mr. Lin, who wrote the email, was not

1 even listed as a custodian when ZHP -- before Skadden Arps was
2 even hired -- came to the court and said we've given you
3 everybody that matters. And they had no lid hold for him,
4 never listed him as a custodian, and the document wasn't even
5 found in his custodial file.

6 So they're not helping themselves with this
7 explanation, they're making it worse because it's very clear
8 the only reason we ever saw that email is because somebody
9 copied it from his laptop and a new date created came up and it
10 must have been outside the realm that they were sweeping
11 documents for.

12 I mean, this doesn't take a rocket scientist to figure
13 out what happened. Otherwise, the document would have been on
14 everybody else's computer and everyone else's custodial files
15 and it would have been freely produced with duplications.

16 So this certification, which was never supplied to the
17 Court, basically says nothing other than believe us, we did the
18 best we could, we're not going to tell you what we did, we're
19 not going to tell you why the electronic documents couldn't be
20 found, we're not going to explain why that July 27 email was
21 only found in that one form, in that one way, and so on and so
22 forth.

23 And Mr. Bernardo, who says he handles document
24 production issues in MDLs, this would never be adequate to
25 explain missing documents if it was a spoliation situation.

1 This is a Rule 37 sanctions situation, I realize that we see
2 similar concepts, but this could never be acceptable. And
3 Mr. Bernardo putting things on the record now to say, well, you
4 know, we really tried hard and we audited; we don't know who,
5 when, why, how, none of those people have certified to
6 anything.

7 This is so little so late that, in our view, the
8 certification should be disregarded because it doesn't answer
9 any of the Court's questions. Unless the question is, hey, do
10 you want us to believe what you say? And obviously, we're at a
11 much more rigorous level, especially when your documents of
12 such significance tying to such an important factual issue.

13 And I'll leave it with this. What you're not --
14 Mr. Bernardo said, well, you know, it wasn't just four
15 documents for Maggie Kong, there were some other documents that
16 we turned up later. Well, they represented that was all that
17 there was and that's all that was produced. So we got a
18 trickle of some dedup documents where they found that other
19 custodians had them. There was nothing of significance they're
20 pointing to.

21 And what they don't have is any documents during that
22 critical period of May 21, 2018, to June 15, 2018, when the
23 back and forth with Novartis was going on and when ZHP -- and
24 all you have to do is read those emails -- was hanging on to
25 this story that everything was fine and kept telling Novartis

1 there's nothing, everything meets quality specs, everything
2 meets quality specs. And eventually Novartis says, look, we
3 have figured this out. You're using sodium nitrate, right?
4 This is NDMA.

5 And then ZHP says, let us look into it. And then they
6 come back and say there's still nothing we could find. And
7 Novartis says, we're going to go to the authorities and your
8 customers if you don't, and finally they have to admit it.
9 That period of time there are no documents for Maggie Kong or
10 Baohua Chen.

11 So that gap is not filled by this certification, nor
12 is it explained. And Your Honor was completely in the right to
13 draw the inferences that you did when you put everything
14 together because the evidence supports the inference.

15 I'm happy to answer any other points, but I think that
16 I've addressed this certification, which is really no more than
17 a red herring.

18 SPECIAL MASTER VANASKIE: Mr. Bernardo?

19 MR. BERNARDO: Your Honor, may I address that?

20 SPECIAL MASTER VANASKIE: Absolutely.

21 MR. BERNARDO: First, Your Honor required a
22 certification. That's what I provided. I provided similar
23 certifications, having done similar extensive searches and work
24 in other litigation without question.

25 I note that this certification is dated October 21st,

1 2022, almost two years ago, and today is the first day that I
2 heard even anything from Mr. Slater suggesting that this was
3 inadequate. Had that been suggested, I would have been happy
4 to provide additional information.

5 But I would also note it wasn't just a certification,
6 the certification followed two lengthy pieces of correspondence
7 that had multiple attachments. Your Honor, there are many,
8 many, many people who are involved in e-discovery, obviously.
9 It's not a matter of you can have the person who reviewed the
10 documents. There are dozens of people who are involved in
11 that, there are dozens of people who are involved in the
12 vendor.

13 My role is to synthesize what I've done and what I've
14 seen and to take my experience in working with clients and
15 working with discovery to state with certainty that appropriate
16 steps under Rule 34 were provided.

17 Mr. Slater may wish that there were more documents
18 that existed. There have been extensive discussions back in
19 this court and I've read transcripts and records going back
20 into legal holds and going back into the company's ordinary
21 record retention practices. The fact of the matter is the
22 absence of fewer than 74 documents from this period is not
23 inconsistent with the absence of Ms. Kong's involvement in that
24 period. She became involved and was involved after June of
25 2018 and there's much more documentation.

1 So again, I disagree that this is inappropriate, this
2 is the first time we're hearing of it, but the more important
3 thing is there still is no basis other than pure conjecture to
4 believe that CMO 54 has not been complied with. And to the
5 contrary, Your Honor has a basis to believe, in fact, it was
6 complied with.

7 Now, I'm not asking Your Honor to change your ruling,
8 we will deal with that with Judge Bumb, but I'm asking Your
9 Honor that as we're considering the appropriateness of
10 particular sanctions, that the fact that this effort was taken
11 and that this was provided certainly meets at least an
12 appropriate showing that the company took its discovery
13 obligations seriously.

14 I mean, as you know, Your Honor, they put up 17 other
15 people for deposition, they produced hundreds of thousands of
16 documents. If they didn't take their discovery obligations
17 seriously, it would have been clearer through those other
18 materials.

19 SPECIAL MASTER VANASKIE: I have to note that I'm
20 troubled by the absence of documents surrounding the disclosure
21 of the contamination and the Novartis communication with ZHP
22 concerning its understanding that there has been this
23 nitrosamine contamination and the serious consequences that
24 flow from that.

25 It would certainly have seemed to me that there would

1 be more documentation than has been disclosed, but there's
2 nothing -- you know, all I can do is listen to what you have to
3 say and say, well, I am sorry, that just doesn't sit well. And
4 that's where I'm at right now, it doesn't sit well with me.

5 I note that on the Maggie Kong production we've
6 counted up the number of pages and it's close to 10,000 pages
7 of documents. I don't know how many documents that translates
8 into. I could easily figure that out, I know that, but all we
9 did is took the Bates numbers and added them all up.

10 And so it wasn't an insignificant production, but it's
11 just troubling that this email sort of tumbles out and comes
12 out as a PDF and it's the only version of it that's available.
13 It just doesn't -- it doesn't make sense, frankly.

14 MR. BERNARDO: With all due respect, Your Honor, what
15 you're raising is a different issue in terms -- it's not an
16 issue as to whether or not ZHP complied with an order and went
17 and provided and conducted appropriate searches.

18 You're making a different question as to it sounds odd
19 to you that there wouldn't have been more documents, but
20 there's already been a review of the legal hold and when that
21 was implemented, there's already been discussions of company's
22 ordinary course retention due to email and other limitations.

23 So again, I think the issue you're raising is a very
24 different issue but is not suggestive of the fact that somehow
25 ZHP derogated its responsibility in compliance with CMO 54.

1 SPECIAL MASTER VANASKIE: Mr. Slater, did you want to
2 be heard?

3 MR. SLATER: Sure, I'll do it briefly.

4 First of all, on the last point, the Irbesartan
5 investigation that that email related to and actually discussed
6 continued well into 2018, when in April of 2018 Min Li directed
7 that the investigation be halted, the report not be
8 disseminated because of the -- and I'm quoting him -- sensitive
9 impurity. So I'm not sure what this litigation hold argument
10 is from ZHP.

11 I'll also say that Your Honor didn't actually request
12 the certification. What happens, as you well know, is counsel
13 started making representations. And you said I think something
14 to the effect of, wouldn't it have been good if you put a
15 certification on this that actually complied with the rules
16 before the hearing, and it was left at that.

17 Then counsel later sends a certification to us,
18 doesn't send it to Your Honor. It's way out of time. We
19 looked at it, it was completely inadequate on its face. And we
20 said, okay, we're going to keep going here because we have
21 orders and we're going to rely on the others. And counsel
22 never came back to the Court and said, hey, we have this great
23 certification, look at it. From our perspective, it was a
24 nothing. And counsel didn't just hear today that it was
25 inadequate. We have been saying that in our papers since they

1 first raised it in this briefing.

2 So I don't -- again, this is really a straw man, this
3 whole entire certification, and -- most of these arguments,
4 frankly, are straw man in terms of trying to set up something
5 that was really not the issue. These documents that were
6 produced were not adequate, they didn't comply with the order.
7 And ultimately, just because the defense lawyer says, well,
8 Judge, you know, we gave you everything we had so we complied
9 with the order, as Your Honor said, the Court is allowed to
10 look at that in light of the entire circumstances and say,
11 well, that doesn't make sense, it doesn't add up. And the
12 Court has the absolute power to do what Your Honor did.

13 And I'm looking forward to talking through the
14 specific sanctions that Your Honor ordered so that we can go
15 through those as well.

16 SPECIAL MASTER VANASKIE: All right.

17 Anything else on this, Mr. Bernardo, before we talk
18 about specific sanctions?

19 MR. BERNARDO: Since my name keeps being bandy about,
20 I want to be very accurate. Mr. Slater is correct, he did
21 raise it in the papers. When I meant I hadn't heard, I meant I
22 hadn't heard for almost two years. He raised it a week ago.
23 He's accurate about that.

24 And then the other point is, I just disagree with the
25 characterization of what transpired at that hearing, but it's

1 transcribed and we can all read it and see it, so I just want
2 to note my record.

3 SPECIAL MASTER VANASKIE: Okay. Let's talk about the
4 question of monetary sanctions.

5 Now, Mr. Slater, ZHP has argued that sanctions that
6 would be -- sanctions of X number of dollars per day, for
7 example, are -- cannot be awarded because they would
8 essentially constitute sanctions for criminal contempt. And
9 it's not a civil contempt, it's not a monetary sanction
10 intended to force compliance or compel compliance with the
11 discovery order; it's a sanction for having violated a
12 discovery order.

13 What's your response to that? I have to say that it
14 does seem to me that maybe I went a little bit too far in
15 saying that I could impose a monetary sanction of X dollars per
16 day for every day they were late in producing documents, for
17 example, or Mr. Chen not showing up for his deposition ever.

18 So what's your response to that?

19 MR. SLATER: My response is the point is well taken
20 and I think that -- I think the law supports -- there's cases
21 that support their position. I think there's cases that go the
22 other way.

23 I think that the most important reason why we're here
24 is that -- it's really two big things. One, anybody who looks
25 at this without first reading every single case that's been out

1 there would look at this and say of course you could sanction a
2 party for just not complying with an order under these
3 circumstances; it makes perfect sense, it makes perfect
4 equitable sense.

5 The bigger issue, I think, for ZHP is not the general
6 law that's out there. I think the biggest issue for ZHP is the
7 concept of judicial estoppel. Because I don't think that this
8 decision is going to be -- or should be determined based on the
9 overall analysis of the law. And I am not agreeing with you
10 that there are certain issues potentially with awarding a
11 strict monetary sanction apart from our fees and expenses,
12 which is a different sanction. But they led in opposing our
13 request for sanctions and said, don't enter a default, enter a
14 daily sanction, here's the case law that says you can award
15 daily sanctions against us, and actually led with a case where
16 a \$50,000 a day sanction was awarded.

17 So I think that's the biggest hurdle for ZHP, is that
18 they took a position, prevailed on it in part because Your
19 Honor did not issue a sanction of a default, which is what we
20 were seeking, and I think that they have a real problem with
21 the concept, judicial estoppel.

22 But I am not going to stand here and tell you that the
23 law is for square 100 percent out outside of the fact that they
24 asked you to do what you did.

25 So I think that gets my point across to you and our

1 position. I want to be as candid as I can and as
2 straightforward as I can, and I think that's really where this
3 needs to turn, is on the specific situation here where ZHP
4 actually argued for the daily sanction to try to avoid the
5 default.

6 SPECIAL MASTER VANASKIE: All right.

7 Mr. Bernardo, do you want to respond to that? You're
8 muted, I'm afraid.

9 MR. BERNARDO: I apologize. There was a barking dog
10 in the background. I didn't want to unmute.

11 I'm not quite sure how to respond to an argument that
12 says that we shouldn't look at the law or be driven by the law
13 because that's why we're here. We're all lawyers and --

14 SPECIAL MASTER VANASKIE: I would like to hear your
15 argument on judicial estoppel. There was an argument to me
16 that don't default us, impose a monetary sanction.

17 MR. BERNARDO: Your Honor, I think that is a very
18 tortured interpretation of the position that was taken in a
19 prior brief. And the case that's being referred to is the *In*
20 *Re: Sealed* case. I looked at the papers. What was clearly
21 being argued was that a sort of trial ending, which any adverse
22 inference, even the mildest, everybody knows, is frequently
23 litigation ending. And it was saying you shouldn't be doing
24 that; if anything, you should award a monetary sanction. I may
25 even have said a similar thing with respect to the argument, I

1 don't recall.

2 But by citing to a case here where they're essentially
3 saying that plaintiffs waived their opportunity to seek a
4 monetary sanction, number one; and to number two, that if the
5 Judge is going to do anything, if Your Honor is going to do
6 anything, it's a monetary sanction, does not stand for the
7 proposition that the kind of sanction that was awarded in that
8 case was appropriate because that is a complete deviation from
9 the law and it is, frankly, a very tortured interpretation of
10 the argument that was made. And there's not an estoppel by
11 saying, Judge, please don't issue an adverse inference, we
12 really don't want that; if you're going to do something, issue
13 a monetary sanction, which implicitly would mean consistent
14 with the requirements of the law, Rule 37 and the Third
15 Circuit, which is abundantly clear.

16 And Your Honor made it very clear. It's you're trying
17 to compel somebody to do something. If you don't do this by X
18 date, I'm going to fine you, you know, for every day you don't
19 do it, a certain amount of money. It's something I should be
20 doing with my contractor at the moment.

21 But there's that and then there's also the notion of,
22 you know, costs or expenses. And you know, fees are a
23 different thing, but there could be other costs that were
24 somehow associated with this. But there's just no room for the
25 kind of sanction.

1 Moreover, even if there were, with all respect, Your
2 Honor, the fact that it took the Court the time it did to rule
3 on this motion should not be something that provides the basis
4 for the per diem. It was not within ZHP's control to have the
5 Court decide sooner. And in fact, that's sort of the very
6 reason why these kinds of fines are prospective, not
7 retrospective, because they can force a company.

8 In one of the cases we looked at or cited to, it was
9 like forcing a bank to produce discovery. If you didn't do
10 this, you know, for every day you're not doing this, we're
11 going to fine you.

12 So that's -- I don't think there's a waiver, I don't
13 think that we're estopped. I think that's a tortured
14 interpretation of the position that counsel took and doesn't
15 really even make sense that counsel would argue, you know, give
16 me a \$50,000 per diem day fine. They'll say, fine, we'll pay
17 for your appropriate costs and fees for having to bring this
18 and for whatever else was incurred as a result of it.

19 SPECIAL MASTER VANASKIE: Mr. Slater, it looks like
20 the delay that it took to issue the decision was me and why
21 should I penalize ZHP for my delay?

22 MR. SLATER: Well, first of all, in federal court
23 we're all realistic, sometimes it takes some time to get a
24 decision out, so we understand that. At worst, you could
25 shorten the time period if that's -- if they're arguing that it

1 shouldn't have taken as long, the time period could be
2 shortened.

3 But let's remember that during that entire time
4 period -- and they now have said in their papers, well, you
5 know, discovery was closed so there was nothing left to do.
6 But they never made an effort to close these last holes, so it
7 was ongoing. That's all I really would have to say on that. I
8 think that -- I think you could shorten the period if that
9 becomes the issue.

10 SPECIAL MASTER VANASKIE: All right. Yeah, I think
11 that -- you know, if I were to award a monetary sanction on a
12 per diem basis, I would shorten the period of time.

13 All right. Let's talk about the attorney's fees.
14 Now, ZHP has argued in its papers that they want to wait to
15 respond on the fees issue until after Judge Bumb rules on their
16 appeal from the sanctions decision itself, but I don't
17 understand why you're unable to respond at this time, for
18 example, on the reasonableness of the hourly rates being
19 requested for Mr. Slater, Mr. Geddis, and the other associate
20 that was involved.

21 MR. BERNARDO: Your Honor, and we didn't specifically
22 focus on the particular point you're raising and the
23 reasonableness of the rates, but as to the whole thing with
24 respect to attorney's fees, with all respect, it's sort of like
25 a Rubik's Cube that's not going together when you look at the

1 various different pieces and components at issue here.

2 And if the Court, for example, were to determine that
3 they fully complied with the, you know, discovery and that
4 there shouldn't be any sanction related to that, the discovery
5 being CMO 54, then certainly we would have to look at and
6 evaluate the fees and dissect them to determine what was spent
7 versus that.

8 Similarly, if the Court makes a ruling with respect to
9 Mr. Chen's deposition that has -- you know, you acted
10 unreasonably by doing X, but reasonably in doing Y, or you
11 didn't act unreasonably at all. I mean, the fact of the matter
12 is to evaluate the reasonableness of them takes an analysis of
13 understanding what's being ordered.

14 And I do appreciate Your Honor's preliminary comments
15 that you want to sort of send this all up having been
16 adjudicated so the Court can respond, but I really do think
17 that once the Court makes a final ruling, the task of dealing
18 with the reasonableness or lack of reasonableness of the
19 various pieces of plaintiff counsel's fees will be much more
20 straightforward and would not sort of burden the Court with
21 various "if then" scenarios.

22 SPECIAL MASTER VANASKIE: You want to say anything in
23 response, Mr. Slater?

24 MR. SLATER: I do just a little bit. This argument is
25 astounding. ZHP and their counsel, Skadden Arps, apparently

1 thinks that they can look at an order from a federal special
2 master, not agree with the fact that it was entered and not
3 agree with the timing and say, well, we're not going to do that
4 so that's the end of it, we're not going to actually do what we
5 were told to do by an order.

6 From my perspective, that's an absolute waiver. If
7 they wanted to try to ask for a different process, they needed
8 to file a motion before their papers were due and ask the
9 Court to modify the approach, but they didn't, so they've now
10 waived that. They should not be given another opportunity
11 later to do what Your Honor ordered them to do within a
12 particular period of time. I don't see how they can be allowed
13 that.

14 And I'm going to just -- I'm not leaving, but I'm
15 plugging my laptop into another plug because it says low
16 battery and it's about to go to sleep, and I don't understand
17 why.

18 (Laughter.)

19 (Brief pause.)

20 MR. SLATER: Okay.

21 SPECIAL MASTER VANASKIE: You have it plugged
22 in?

23 MR. SLATER: It says it's working now, so I'm going to
24 trust the electronics.

25 (Laughter.)

1 (Discussion held off the record.)

2 SPECIAL MASTER VANASKIE: I am troubled by the
3 response on the attorney's fees issue. You know, I didn't give
4 you enough time or you could have asked for more time in terms
5 of the specifics, in terms of the time entries.

6 And on the reasonableness of the hourly rates, well, I
7 see no reason why you couldn't have responded with respect to
8 that.

9 I need to put this in a position for Judge Bumb to
10 make decisions. And it's not satisfactory to say, well, we'll
11 come back after we appeal -- I know you're confident in your
12 appeal, but if you lose, it's just compounding things. And I
13 think it's better to get something before Judge Bumb so that
14 she has the full decision.

15 As I said, as a -- with my appellate experience,
16 we reviewed your appeal as interlocutory, let's get a final
17 decision and then appeal. You chose now to appeal, that's
18 fine, but I'm going to go ahead and do what I'm going to do.
19 I'm not going to wait for that process, but I'm going to try to
20 put it in a process that Judge Bumb has before her
21 everything she needs to make the decisions she has to
22 make.

23 Is there anything else on this that -- well, let's
24 talk about the adverse inference instruction or the proposed
25 findings of fact that the plaintiffs had submitted to me.

1 MR. BERNARDO: Who would you like to hear from on
2 that, Your Honor?

3 SPECIAL MASTER VANASKIE: Well, let's hear from your
4 side first.

5 MR. BERNARDO: Sure.

6 Your Honor made it very clear with your ruling that
7 even with an understanding and belief that ZHP had not complied
8 with CMO 54, which we believe that we did, that the
9 circumstances -- I'm getting a note saying there's one minute
10 left to our meeting that just popped up on the screen.

11 SPECIAL MASTER VANASKIE: Yeah, someone had said five
12 minutes. I don't know.

13 (Laughter.)

14 MR. BERNARDO: Okay.

15 SPECIAL MASTER VANASKIE: If it goes away, we'll try
16 and --

17 MR. BERNARDO: I won't take it personally. Got it.
18 I'll be very brief. I'm talk quickly.

19 You made it very clear that you did not believe that
20 deeming plaintiffs' allegation admitted or precluding ZHP from
21 defending plaintiffs' claims was appropriate. You made it very
22 clear and you used the phrase "lesser sanction" multiple times
23 throughout your decision.

24 But plaintiffs' proposed findings of fact and adverse
25 inference went the exact opposite direction. They proposed the

1 absolute harshest possible adverse inference in finding of
2 fact. They essentially seek to end the litigation and they,
3 themselves, would like a directed verdict.

4 The supposed findings of fact are not fact at all.
5 They're what plaintiffs want the facts to be, and I understand
6 why they want them to be that. But many of them are just made
7 up with no basis, many of them are directly contrary to the
8 only evidence that is in the record.

9 We put in a very detailed submission, and I'm not
10 going to take your time, Your Honor, to rehash that whole
11 thing, but simply to point out -- you know, I gave one example,
12 which was the whole CMO 54. The findings of fact are
13 completely inconsistent with what I just described. The
14 other -- another example is Finding of Fact Number 7, that the
15 Court has determined that ZHP, at Baohua Chen's direction,
16 covered up and prevented the disclosure of ZHP's actual
17 knowledge.

18 There's not an iota of evidence, Your Honor, to
19 support that. I understand that that's plaintiffs' argument
20 and it is a great closing argument, but it is not a finding of
21 fact. It is not an adverse inference along the lines of what
22 Your Honor suggested.

23 And we cited to a case that gives us sort of three
24 tiers of adverse inference and we gave you -- and I refer you
25 to, I believe it's on pages 2 and 6 of our submission, what we

1 think -- sorry, pages 6 and 12, what we think an appropriate
2 adverse inference would be.

3 But we strongly believe that our objection should be
4 sustained with respect to the findings of fact that are in
5 plaintiffs' submission.

6 SPECIAL MASTER VANASKIE: All right. Thank you.

7 Anything else on that, Mr. Slater?

8 MR. SLATER: Yes, Your Honor.

9 First of all, one broad statement I'm going to make to
10 match another broad statement is I believe that there's a lot
11 of mischaracterizations of your order, Special Master Order
12 Number 98, that we're just hearing. And I think what's being
13 argued is that I think what counsel said is you did what you
14 said you weren't doing, but you didn't.

15 You didn't give the terminating sanctions that we
16 asked for and that we thought were appropriate and that we
17 thought could be justified. Your Honor made -- and you cited
18 persuasive law. The restatement is directly on point in this
19 and says, number one, adverse findings of fact can be made by
20 the Court and that's a reasonable way to address the sanction
21 here.

22 Your Honor didn't direct a verdict on anything. We
23 have multiple claims in this case. And all Your Honor has done
24 is made a finding or is going to make findings of certain facts
25 that the jury is going to have to take as true.

1 When I went through the opposition to our findings of
2 fact, it ran the gamut from you don't need to make this finding
3 because the documents already stand for this proposition. For
4 example, with Baohua Chen's place in the company. I was very
5 surprised to see that there's objection to that, but it fits
6 with what's been going on in the litigation where counsel for
7 ZHP will tell us -- I mean, they're stipulating to virtually
8 nothing and they're saying, you know, you have documents, go
9 prove it.

10 Probably not the most efficient way to try a case in
11 federal court where everybody knows something is true. But
12 you're going to have to take time to prove facts that everyone
13 should stipulate to, but that's not a legitimate objection to
14 the finding of fact. That's part of what the jury needs to
15 understand for the context.

16 Now, instead of going through all the findings, which
17 we're very confident come directly from your order -- we gave
18 you citations to the pages of your order. We copied the
19 language. We literally copied the same findings, some of the
20 findings that Judge Kugler affirmed having to do with Baohua
21 Chen's place in the company. They appealed that to Judge
22 Kugler, and you were affirmed on that, so that motion was
23 denied.

24 I think the problem that ZHP is having, is getting
25 their arm around, is that the facts are very bad, they're very

1 incriminating, they fully support these adverse inferences.
2 And two small -- maybe not small points, but two more points of
3 that.

4 One, when you read their brief and they argue, well,
5 the email doesn't say anything about there being NDMA in
6 Valsartan. I mean, we understand the words are in the
7 document, but that's not what it says -- I mean, this is -- and
8 then they supply to you reams of evidence, quote/unquote
9 evidence, of witnesses who say, well, that doesn't mean what it
10 says.

11 Well, that's the story they gave, which Your Honor is
12 making an adverse inference against them based on the plain
13 language, based on them not producing the chairman of the
14 company for his deposition, and the few important things that
15 are missing still that we can focus to that even ZHP doesn't
16 claim that we have.

17 Now, why is Baohua Chen so important on this and why
18 are your findings correct? Min Li and Linda Lin, who is the
19 head of regulatory, and Min Li was the head of the CMAT
20 facility and analytical testing that Jinsheng Lin worked under
21 them, those are the people that got that email. The idea that
22 it is a leap to say they wouldn't have said to the chairman of
23 the company, hey, there's an email that shows that there's NDMA
24 in the Valsartan up through Novartis, going back and forth, and
25 that they wouldn't tell the chairman of the company, hey, we're

1 on the verge of it being outed that we've been selling
2 Valsartan containing NDMA, the idea that he was not aware of
3 that, in light of all the other findings Your Honor has made,
4 which are more than adequately supported by record.

5 The record is heavy on Baohua Chen's involvement
6 with Valsartan. Nobody can reasonably believe he wouldn't
7 have known. And making that finding based on the
8 interrelationship of him not being produced, the lack of
9 production of the July 27 email, et cetera, it all ties
10 together.

11 The last point I want to make is counsel said,
12 number seven, how can you say there was a cover-up?
13 Where does that come from? That language is right in SMO 98,
14 it's on, I believe, page 38 of the decision, and that's exactly
15 what the evidence -- certainly the reasonable inferences
16 from the evidence show. And for Your Honor to draw those
17 inferences is by far a small step. It's not a giant leap, it's
18 not a terminating sanction, it's factual findings.

19 ZHP still intends to fully defend this case. They
20 have all sorts of arguments they have on the law, all sorts of
21 arguments on class certification. They've been letting us know
22 for a long time that they think some of the decisions are going
23 to get wiped, that we can't recover under this theory or that
24 theory. So they have plenty of defenses and plenty of
25 arguments that they're making, and making these findings is not

1 the end of the road. They just happen to be the findings that
2 make perfect sense in light of the record.

3 And I'll just say lastly, the reason counsel can go so
4 fast through the findings is because in their brief, again,
5 it's just believe our witnesses, just believe what our
6 witnesses said, the ones who said nobody knew this, when
7 everything is to the contrary.

8 So, Your Honor, we believe that our findings of fact
9 hew to your decision, your decision is well supported, and we
10 ask that our findings be implemented.

11 SPECIAL MASTER VANASKIE: Anything else, Mr.
12 Bernardo?

13 MR. BERNARDO: Just briefly.

14 That was a terrific closing argument and that's
15 exactly what the whole problem here is, Your Honor, is that an
16 adverse inference isn't that. It's not let me tie up ends and
17 speculate and come up with things. It's the opportunity for a
18 jury to consider that the absence of Mr. Chen's deposition, he
19 would have said something that would have been unhelpful to the
20 company. While we disagree that that's warranted, that's an
21 appropriate adverse inference.

22 What has been provided to Your Honor for consideration
23 is literally a closing argument. And I understand that ZHP
24 certainly still has legal arguments and will make those, but
25 Mr. Slater can't say with a straight face that ZHP can fully

1 defend itself at trial.

2 This adverse inference would essentially almost make
3 it impossible for ZHP to defend itself and have a fair trial
4 and to be able to tell its side of the story.

5 SPECIAL MASTER VANASKIE: Well, a fair trial requires
6 that there be full and complete discovery and disclosure during
7 discovery. And when a judge is -- or now a special master, is
8 presented with concerns that there has not been full and
9 complete disclosure, that's where the adverse inference is the
10 remedy.

11 We'll take a look at it, but I do want to have before
12 Judge Bumb what I think the adverse inference or inferences
13 should be, and then she can make a decision whether that's
14 appropriate or not. She is the trial judge. All right?

15 Is there anything else?

16 MR. BERNARDO: Not from me, Your Honor.

17 Thank you very much. I appreciate your hearing us.

18 SPECIAL MASTER VANASKIE: Mr. Slater?

19 MR. SLATER: Nothing from me, Your Honor.

20 Thank you so much for your patience through this
21 argument.

22 SPECIAL MASTER VANASKIE: All right. Thank you
23 all.

24 All right. I think that's it for today then. We'll
25 adjourn the call and you'll be receiving an order from me, and

1 I guess I'll see you in July now. All right.

2 MR. BERNARDO: Thank you, Your Honor.

3 MR. SLATER: Thank you, Your Honor.

4 (Matter adjourned at 2:05 p.m.)

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8 I certify that the foregoing is a correct transcript
9 from the record of proceedings in the above-entitled matter.

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11 /S/ Sharon Ricci, RMR, CRR
12 Official Court Reporter

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14 June 25, 2024
15 Date

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